

May 1, 2019

Mr. Rich Lefebure
Rummel, Klepper & Kahl, LLP
700 East Pratt Street, Suite 500
Baltimore, MD 21202

Re: Diageo Sewer and Siphon Repair Project
Forest Conservation Variance
Tracking #01-19-2990

Dear Mr. Lefebure:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on April 19, 2019. If granted, the variance would allow removal of one (1) specimen tree in order to replace the degraded sewer and siphon serving the Diageo facility in Halethorpe, Maryland. Extensive incision within the Herbert Run stream channel has caused the existing sewer and siphon to become exposed and subject to storm flows. Emergency repairs have been performed to stabilize the existing pipe, but the sewer and siphon must be replaced at a lower elevation to prevent further degradation. The specimen tree to be removed is a 30-inch diameter-at-breast-height (DBH) green ash in fair to poor condition. There are three other specimen trees within or near the project's limit of disturbance (LOD) that will not be impacted by the proposed construction.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner to show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to repair the existing sewer and siphon system supporting the Diageo facility. The repairs are necessary to keep the sewer and siphon in functioning condition. Therefore, full application of the law would

deprive the applicant of sustaining beneficial use of the property. Consequently, we find that this criterion has been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due the location of the specimen tree in relation to the existing sewer that requires repair rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of forested areas and various commercial warehouses. Given that a sewer line already exists in the location of the project and the majority of the cleared forest will be replanted in accordance with an approved Forest Conservation Plan, we find that granting this variance will not alter the essential character of this neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. While the repairs will temporarily impact Herbert Run and its associated forest buffer, the project must be completed to protect water quality and public health. As such, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although one specimen tree is to be removed and 0.5 acre of forest will be permanently cleared, the applicant will provide reforestation for 0.7 acre of temporary forest impacts and will pay a fee in lieu of mitigation for the permanent forest loss. Moreover, three additional specimen trees within or near the LOD of the project will be protected from impact. Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. No mitigation is required for the removal of the specimen tree as it is located within forest proposed for clearing for which mitigation is already being provided through implementation of the Forest Conservation Plan.
2. A final Forest Conservation Plan revised to address EPS staff comments and detailing the protection of the remaining specimen trees and forest shall be approved by EPS, and the 0.5 acre of offsite reforestation provided prior to grading and sediment control plan approval.
3. The following note must be on all subsequent plans for this development project:

“A variance was granted on May 1, 2019 by Baltimore County Dept. of Environmental Protection and Sustainability to remove one specimen tree. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met, including both on and offsite reforestation.”

This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law. It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/lbe

- c. Mr. David Bayer, Baltimore County Department of Public Works
Ms. Marian Honecny, Maryland Department of Natural Resources